

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
FEBRUARY 2, 2016**

CALL TO ORDER
6:01 pm A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. at the Earl Bennett Building, Conference Rooms A and B, 1035 1st Ave W, Kalispell, Montana. Board members present were Gina Klempel, Mark Hash and Roger Noble. Ole Netteberg and Cal Dyck had excused absences. Mark Mussman and Rachel Ezell represented the Flathead County Planning & Zoning Office.

There were 16 people in the audience.

APPROVAL OF MINUTES
6:02 pm Klempel motioned and Noble seconded to approve the December 1, 2015 minutes as provided in the meeting packet.

The motion passed unanimously.

ELECTION OF OFFICERS
6:02 pm Klempel motioned and Noble seconded to postpone the election of officers until a full board is present.

The motion passed unanimously.

PUBLIC COMMENT
6:02 pm None.

KARROW PROPERTIES LLC
(FCU-15-12)
6:03 pm A request by Karrow Properties LLC for a conditional use permit to establish a 'Camp and Retreat Center' on property located within the Southeast Rural Whitefish Zoning District and zoned SAG-10 (Suburban Agricultural). The subject property is located at 1545 Karrow Avenue.

STAFF REPORT Ezell reviewed Staff Report FCU-15-12 for the Board.

BOARD QUESTIONS Hash asked about hours of operation.

Ezell said the hours of operation were not included in application. She pointed out the property is rather large, 19 acres in size and fairly forested. The surrounding lots are also large lots. Because of that and the fact it is intended to be seasonal in nature, staff felt hours of operation might not be appropriate. She stated if the board felt it was necessary they could add a condition but because of the fact the parcel is located in a rural area, forested and intended to be seasonal in nature she didn't feel hours of operation were necessary.

Hash stated even if the applicant doesn't address hours of operation in the application, the planning office usually imposed them if they feel they are necessary. He said the board was trying to protect the neighbors by mitigating any problems and his understanding was staff felt the noise would be confined to the property and not be adverse to neighboring properties.

Ezell said yes.

**APPLICANT
PRESENTATION**

Yvonne May and Jake Christiansen addressed the noise and hours of operation, saying they would instill hours for quiet time from 10:00 pm to 7:00 am. Part of the nature of what they were trying to do was provide a relaxing point for people to come and have an educational stay that wasn't confined to an urban-type setting. They felt staff did a great job explaining the project. They have spoken with Wendee Jacobs in the Environmental Health Department to discuss options besides paving. They wanted to showcase options that were more eco-friendly but would pave if they were required to.

**BOARD
QUESTIONS**

None.

**PUBLIC
COMMENT**

Eugene Lamb, 1535 Karrow Avenue, spoke in favor of the proposal. He felt it was a great use of land.

Larry Parsons, 11885 Hwy 2 E- W Glacier, spoke in favor of the proposal. He knows the property owners and is aware of their environmental consciousness. He wanted to verify they were first class, high quality people and would make it a first class project.

Jessica Downing, 119 Mill Avenue, spoke in favor of the proposal. She stated it would provide a need that Whitefish doesn't currently have and would be a great addition to the community.

**STAFF
REBUTTAL**

None

**APPLICANT
REBUTTAL**

None

**BOARD
DISCUSSION**

Klempel asked the applicant what types of trees were on property and how small the tiny houses were.

Christiansen said currently there were a mix of trees such as Birch, Aspen, Larch and Spruce. The tiny houses will be approximately 300-320 square feet.

Noble pointed out the area had a high water table there. He asked the applicants if they had been through a monitoring period.

Christiansen stated the City of Whitefish was originally looking at the parcel to

be a cemetery site and had Jere Johnson monitor the site. They also had an area monitored for a septic system. They were currently working with A2Z Engineering to design a septic system that fits the need and have provided that information to the Environmental Health Department for review. The initial subdivision section of the land was for a single family residence so they didn't want to submit two Certificates of Subdivision Approval (COSA) per the Environmental Health Departments recommendation but will submit one after they go through the conditional use permit process.

Hash asked the applicants if the board added a condition for quiet time from 10:00 pm to 7:00 am would they have a concern with that.

Christiansen said no.

Noble asked staff about the subdivision approval on the property.

Ezell said they currently have preliminary plat approval and are hoping to get final plat approval. One of the conditions of preliminary plat approval was to obtain a COSA but the applicants only want to go through that process once which is why they were trying to obtain a conditional use permit at this point.

**MAIN MOTION
TO ADOPT F.O.F.
(FCU-15-12)**

Noble made a motion seconded by Klempel to adopt the Findings-of-Fact as written.

**BOARD
DISCUSSION**

None

**ROLL CALL TO
ADOPT F.O.F.
(FCU-15-12)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

None

**MAIN MOTION
TO APPROVE
(FCU-15-12)**

Noble made a motion seconded by Klempel to accept Staff Report FCU-15-12 as Findings-of-Fact and Approve the Conditional Use Permit with the added condition that quiet hours be from 10:00 PM to 7:00 AM.

**BOARD
DISCUSSION**

None

**ROLL CALL TO
APPROVE
(FCU-15-12)**

On a roll call vote the motion passed unanimously.

**WINTER PARK
VENTURES
LLC/MAJESTIC
VALLEY LLC
(FZV-15-06)
6:22 pm**

A request by Sands Surveying, on behalf of Winter Park Ventures, LLC for a zoning variance to property within the Highway 93 North Zoning District and zoned SAG-5 (Suburban Agricultural). The applicants are requesting a variance to Section 5.11.040(1)(A-C), 'Permitted signs in AG-80, AG-40, AG-20, SAG-10, SAG-5, CCC-1 and CCC-2 districts...' of the Flathead County Zoning Regulations. The property is located at 3630 Highway 93 North.

STAFF REPORT

Mussman reviewed Staff Report FZV-15-06 for the Board. He handed out the minutes from the Riverdale Land Use Advisory Committee meeting to the board members and the applicants.

**BOARD
QUESTIONS**

None.

**APPLICANT
PRESENTATION**

Erica Wirtala, Sands Surveying, Inc. represented the applicants, Jan & Bob Parker. She pointed out on a map all the accesses and explained the request. She stated the current signage had outgrown its use and they felt it was a public health and safety hazard. She spoke about when Majestic Valley Arena was first built and Highway 93 was not a 70 mph highway it was 55 mph and was only two lanes. When initial plans for adding lanes to Highway 93 were drawn up by MDT there was supposed to be a deceleration lane for access to Majestic Valley Arena but due to budgetary constraints that got cut. There was also supposed to be a deceleration lane to get off at Church Drive but that was cut as well. She spoke about the hazards of large trailers filled with very expensive horses or livestock having to slam on their brakes and make a hard ninety degree turn into the facility. They were asking for a variance but didn't specify exactly what size the sign would be; they would like to be considered for the same type of signage allowed in a B-2 zone. She pointed out other properties in the area zoned B-2 and stated the sign would not be out of character for the area. She talked about the events held at the arena and what an asset it was for the community. She said the proposal falls within the Riverdale Neighborhood Plan which designates the property as 'mixed use' which anticipates commercial and residential uses kind of mixed together on it. This proposal is keeping with the original plan they had worked with. They are good neighbors and follow the requirements of the zoning and were here to answer any questions the board may have.

**BOARD
QUESTIONS**

Noble asked what options the applicants were considering for signage.

Wirtala said they looked at a couple of signs in the area to see what was out there and what would be a good mix for the area. She showed the board a couple of sample pictures and said there would be some sort of electronic text at the bottom portion of the sign so they could advertise upcoming events and they understood it would not be able to flash or blink or be obnoxious.

**PUBLIC
COMMENT**

None

**STAFF
REBUTTAL**

None

**APPLICANT
REBUTTAL**

None

**BOARD
DISCUSSION**

Noble said he liked one of the options and wished there were definite dimensions.

Klempel asked if they knew what the dimensions of the sign might be.

Wirtala said they were shooting for generalities because they hadn't worked with a sign maker yet. What they were asking for was just the signage requirements allowed in the B-2 zone. It would be a combination of the building frontage that a person were allowed per square feet of highway frontage and how far back they decided to put the sign would also play into the size that it could be. There would have to be some work on the main entrance and the right of way with MDT. They didn't believe they would exceed 28' tall but they didn't know any of the other specs at this time.

Hash stated the whole highway had been controversial for a long time on types of development, signage and that type of thing. He said one of the concerns the board would have would be whether or not they would be setting precedence with granting variances on the premise that it's a safety issue. He agreed with this application that there truly was a safety issue. He asked the applicants if they were aware whether or not there was discussion of putting a traffic light there.

Wirtala said she hadn't heard of it being put at that location, she thought it would be further north. For special events they brought in temporary lighting or the police department to direct traffic.

Hash asked Mussman how the planning office perceived the whole area for signage in the future and for future applications.

Mussman said the property directly across Highway 93 was zoned B-2 and would be able to have signage allowable in that commercial zoning district; this proposed sign would be on premise signage and would not set a precedent for other activities up and down the highway. There was only one Majestic Valley Arena, the variance was specific to the use on the property and there were no other uses like this on the property. It appears the infrastructure of the sign will be constructed to match the theme of the use. Esthetically it would fit in well and the size limits would come into play in the commercial zones.

Hash asked what limits the safety for drivers when there was a reader board that actually moved. Is it the zoning that controls that or highway safety; what regulates that?

Mussman stated he couldn't address that question as the planning office encounters a lot of those animated signs. He suggested bringing a co-pilot along to read the signs.

Wirtala said MDT had a matrix or graph for calculating a certain speed and how much site distance a person had. They use it for calculating how much distance there should be between approaches. The same thing could be said for signage. This sign would be general announcements and would be kept very brief. She wanted to comment about the board setting a precedent. She stated that was what the board was there for was to discern whether or not in each instance the applicants followed the criteria.

Hash said as far as anybody knew there really wasn't a regulation that regulated what goes on the sign.

Klempel said the Department of Transportation had nothing.

Noble asked Mussman if there was a formula used regarding the setback from the highway and the ratio of the sign height and area.

Mussman spoke of the size allowed and the setback from the highway. He read from the section of the zoning regulations pertaining to signage.

Noble stated if the variance were approved would they work with the planning office to make sure the size met the county requirements.

Mussman said they probably would to make sure it met the requirements in the regulations. He stated the board could add a condition that the size of the signage could not exceed what was allowed in the B-2 zone.

Wirtala said they want the sign to be the same as what was allowed in the B-2 zoning districts.

**MAIN MOTION
TO ADOPT F.O.F.
(FZV-15-06)**

Noble made a motion seconded by Klempel to adopt the Findings-of-Fact as written.

**BOARD
DISCUSSION**

None

**ROLL CALL TO
ADOPT F.O.F.
(FZV-15-06)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

None

**MAIN MOTION
TO APPROVE
(FZV-15-06)**

Noble made a motion seconded by Klempel to adopt Staff Report FZV-15-06 as Findings-of-Fact and Approve the Zoning Variance adding a condition that the signage on the property cannot exceed what is allowed in the B-2 zoning.

**BOARD
DISCUSSION**

None

**ROLL CALL TO
APPROVE
(FZV-15-06)**

On a roll call vote the motion passed unanimously.

**DAVID VAN
BUREN/WORD
OF LIFE
(FCU-15-11)
6:47 pm**

A request by David Van Buren representing Word of Life for a conditional use permits to establish a 'church' on property within the Westside Zoning District and zoned R-1 (Suburban Residential). The subject property is located at the north end of Hathaway Lane, contains approximately 5.6 acres.

STAFF REPORT

Mussman reviewed Staff Report FCU-15-11 for the Board. He handed out three comments that had been received by the planning office after the board packets had been mailed.

The board took a few minutes to read the comments.

Hash informed the applicants that two members of the board were not present at the meeting and the vote would have to be unanimous with the three that were present. He gave the applicants the option of postponing the proposal until the next regular meeting.

Mussman said that would be appropriate due to the fact the applicant had not had an opportunity to see the comments prior to the meeting. There were some proposed conditions that would address some of the concerns but perhaps not all of them. Postponing the application would give the applicant time to review the issues that were brought up in the comment letters and propose some kind of mitigation or alternate plan as opposed to going all the way through the process tonight and hoping for the best.

The applicants decided they would exercise their right to postpone the application.

Mussman said the agenda item would be added to the next month's regular meeting agenda which would be March 1, 2016. It would give the applicant the opportunity to review the comments and see if there were issues that could mitigate some of the concerns. He commented that the members of the board had been on the board for quite some time and had experience with applications that could meet the criteria even with opposition; so opposition didn't necessarily doom a request.

**BOARD
DISCUSSION**

Hash stated based on the applicants request to postpone the application and staff stating the agenda item would be added to the next regular meeting, it was unanimous from the board they would approve that request.

Noble said under agency comments he didn't see where staff had contacted MDT and wanted to hear what their response would be regarding the proposal.

**BETSY
MORRISON
(FZV-15-05)
7:00 pm**

A request by Betsy Morrison for a zoning variance to property within the West Valley Zoning District and zoned West Valley. The applicant is requesting a variance to Section 3.34.040(3), "Minimum Yard Requirements" of the Flathead County Zoning Regulations which requires a twenty (20) foot setback from a road easement. The applicant has placed a manufactured home, currently being used as a 'family hardship dwelling,' approximately three (3) feet from the edge of the 60-foot private road easement. The property is located at 141 Viano Lane.

STAFF REPORT

Mussman reviewed Staff Report FZV-15-05 for the Board and handed out the minutes from the West Valley Land Use Advisory Committee.

**BOARD
QUESTIONS**

None

**APPLICANT
PRESENTATION**

None

**BOARD
QUESTIONS**

None

**PUBLIC
COMMENT**

None

**STAFF
REBUTTAL**

None

**APPLICANT
REBUTTAL**

None

**BOARD
DISCUSSION**

Hash stated the application seemed acceptable to him and spoke of people in the past that had taken advantage of the family hardship exemption. He said this application did not appear to be that.

Mussman said there had been no public comment received at the West Valley Land Use Advisory Committee meeting. There were three neighbors in attendance that had questions but were satisfied that the manufactured home would be placed there for a short period of time. He said if the board approved the proposal and the condition that it run concurrently with the septic approval, if the applicants needed additional time they would have to go through septic approval again and the zoning variance process again. At that time it would be a totally different situation. Just because it had been there for a year did not mean it would automatically be granted, it would have to go through the same process it's going through now. Essentially it would be a temporary, short term family hardship unit that just so happens because of topographic and other reasons specific to the site was set too close to the property line.

Hash asked if staff was recommending the board add a condition that the hardship dwelling run concurrently with the septic permit.

Mussman said the board should add that condition.

Klempel commented this was the first time she had heard of issuance of a temporary septic permit.

The board and staff discussed the consequences if the dwelling unit should still be there after the expiration of the septic permit and how long the manufactured home had been there.

**MAIN MOTION
TO ADOPT F.O.F.
(FZV-15-05)**

Klempel made a motion seconded by Noble to adopt the Findings-of-Fact as written.

**BOARD
DISCUSSION**

None

**ROLL CALL TO
ADOPT F.O.F.
(FZV-15-05)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

None

**MAIN MOTION
TO APPROVE
(FZV-15-05)**

Klempel made a motion seconded by Noble to adopt Staff Report FZV-15-06 as Findings-of-Fact and Approve the Zoning Variance adding a condition that the hardship dwelling runs concurrently with the septic approval.

**BOARD
DISCUSSION**

None

**ROLL CALL TO
APPROVE
(FZV-15-05)**

On a roll call vote the motion passed unanimously.

**NEW BUSINESS
7:10 pm**

None

**OLD BUSINESS
7:10 pm**

Hash spoke about the variance application from Majestic Valley Arena and how it was an excellent application but how any sign application along that corridor could bring up safety as a reason for a variance. His hope was that the planning office would help the board truly look at future signage that comes before them for a variance to make sure an applicant was not taking advantage of the terminology.

Mussman restated the importance of Majestic Valley Arena and commented there wouldn't be another one on Highway 93. Staff counsels members of the public who want to apply for a variance saying that variances should be very rare and there should be something very specific to the property; typically not something the applicant did.

Hash wanted to make sure people wouldn't take advantage of the variance process.

Mussman said staff would be very cognizant of that and not allow an applicant to bully the Board of Adjustment to a quick approval just because a different request was approved in the past. The board could contemplate whether or not it would be setting a precedent but the only way would be was if something exactly like this came down the pike again. But there won't be on Highway 93. Furthermore, the city of Kalispell has business, commercial zoning and is planning development on the south side of Church Road and Highway 93 that could have, in the commercial aspect, it could have signs facing Church Road that are plainly visible from Highway 93 that could look like an extension of businesses not too far to the south. With today's technology and navigational aids it's really hard to argue the need for a sign.


Klempel said what the applicant was trying to say was that when you are moving livestock it can be dangerous. Majestic Valley Arena is a compliment to the valley, a great recreation facility and family oriented. Highway 93 is a safety issue. The arena is unique and the other alternative would have been to change the zoning.

Mussman said changing the zoning would be a much greater challenge. They spent some time talking about their options with staff. The rendering for the sign in the staff report looked gigantic but it probably wouldn't be that big.

Klempel said there would probably be more and more development on Highway 93. That's the way the valley is going.

ADJOURNMENT
7:17 pm

Hash made a motion seconded by Klempel to adjourn the meeting. The next meeting will be March 1, 2016.



C. Mark Hash, Chairman



Mary Fisher, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: /16